

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3574 OF 2019

1. Navnath Fakkad Phatangade,
Age 30 years, Occ. Labour work,
R/o Kavathe Yamai,
Taluka Shirur, District Pune
2. Fakkad Dhondiba Phatangade,
Age major, Occu. Agriculture,
R/o as above.
3. Vimal Fakkad Phatangade,
Age major, Occu. Household,
R/o as above.
4. Anusaya Fakkad Phatangade,
Age major, Occu. Household,
R/o as above.
5. Sharad Fakkad Phatangade,
Age major, Occu. Labour work,
R/o as above.
6. Shashikala Santosh Bhavar,
Age major, Occu. Agriculture,
R/o as above.
7. Santosh Sakharam Bhavar,
Age major, Occu. Agriculture,
R/o as above.
8. Bhugabai Sunil Ichke,
Age major, Occu. Household,
R/o Narayangaon,
Taluka Shirur, District Pune
9. Sunil Ramdas Ichke,
Age major, Occu. Agriculture
R/o as above.
10. Kalpana Navnath Walunj,

Age major, Occu. Household
R/o Fakata, Taluka Shirur,
District Pune

11. Navnath Narayan Walunj,
Age major, Occu. Agriculture
R/o as above.

12. Pandurang Narayan Walunj,
Age major, Occu. Agriculture
R/o Loni, Taluka Ambegaon,
District Pune

13. Rupali Pandurang Walunj,
Age major, Occu. Household
R/o as above.

... APPLICANTS

VERSUS

Jayshri @ Supriya Navnath Phatangade
age 25 years, Occu. Nil,
R/o New Shantiniketan Colony,
Jawahar Nagar, Tal. & Dist. Aurangabad ... RESPONDENT

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Shri Swapnil M. Mule, Advocate for applicants
Shri D.B. Pokale, Advocate for respondent
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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 3rd March, 2022

Date of pronouncing judgment : 4th October , 2022

J U D G M E N T :

The challenge in this application under Section 482 of the Code of Criminal Procedure is to a proceeding, being P.W.D.V.A. No.431/2019 initiated by the respondent

under Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act for short) in the Court of Judicial Magistrate, First Class, Aurangabad.

2. The facts giving rise to the present Application are as follows :

The respondent (wife) claims to have married the applicant No.1 on 14/5/2018 at Loni, Taluka Ambegaon, District Pune. It was an intercaste marriage. The marriage expenditure was borne by the father of the respondent. She started residing along with applicant No.1 and her parents-in-law at village Kavathe Yamai. She was treated well for a period of first three months of marriage. The applicants thereafter allegedly started asking the respondent to fetch Rs.3,00,000/- from her parents. All the applicants would harass and ill-treat the respondent so as to coerce her to meet their demand. It is further her case that, she along with applicant No.1 shifted to Aurangabad and resided together there. The applicant No.1 continued to ill-treat her as before. He has extra-marital relationship with one lady. In January 2019, the applicant left the house for no return. The respondent had, therefore, no option but to lodge a missing

person's report with the concerned police station. The applicant No.1 was later on found at his native. The respondent and her relations reasoned with the applicants. They, however, did not listen.

3. It is further the case of respondent that, the applicant No.1 is financially sound. He has agricultural land. He does milk business as well. The respondent, therefore, prayed for Rs.20,000/- as maintenance per month besides provision for her residence and other reliefs.

4. Heard. The learned counsel for the applicants would submit that, the respondent was a married woman on the date on which she claims to have married the applicant No.1. There could, therefore, not be marital or even marriage-like relationship between the two. The respondent, in fact, practiced fraud. She had filed a petition for dissolution of marriage against her first husband. It was a petition under Section 13(b) of the Hindu Marriage Act. It was allowed on 25/4/2019. She had filed application under Section 12 and other related Sections against her erstwhile husband for reliefs under the Domestic Violence Act. The same indicate her instinct to financially exploit the husband and her in-laws. Some documents have also been placed on record to indicate

that the applicant No.1 had to lodge a police report against the respondent. A settlement was arrived at between the two. A writing to that effect was executed. The learned counsel would further submit that, even distant relations of the applicant No.1 have been roped in, only with a view to compel the applicant No.1 to come to terms. According to the learned counsel, initiation of proceedings under the Domestic Violence Act is nothing but an abuse of process of Court. He, therefore, urged for grant of the criminal application.

5. The learned counsel for the respondent would, on the other hand, submit that, there are photographs on record to indicate the applicant No.1 married the respondent on the given date. The term 'domestic relationship' appearing in Section 2(f) of the Protection of Women from Domestic Violence Act includes even marriage like relationship. In support of his contentions, the learned counsel has relied on the following authorities :

- (1) Indra Sarma Vs. V.K.V. Sarma
(2013) 15 SCC 755
- (2) Dyaneshwar s/o Ramkrushna Wardhekar Vs.
Smt. Vandana Dyaneshwar Wardhekar & anr.
2021 ALL MR (Cri) 4101
- (3) Nilesh Gangaram Nalavade & anr. Vs.
Dhanlaxmi Gangaram Nalavade & anr.
2019 ALL MR (Cri) 9489

According to learned counsel for the respondent, the averments in the application prima facie make out a case to proceed against all the applicants under the relevant provisions of the Domestic Violence Act. The questions of fact cannot be gone into at this stage. He, therefore, urged for rejection of the Criminal Application.

6. Considered the submissions advanced. Perused the application and the documents relied on. It is true that, the respondent was previously married with one Laxman Waghmare. Her marriage with Laxman Waghmare came to be dissolved by a decree of divorce passed on 25/4/2019. The respondent claimed to have married the applicant No.1 on 15/5/2018 i.e. about a year before dissolution of her first marriage. There are photographs on record to indicate the marriage between the applicant No.1 and the respondent. The term "domestic relationship" is defined in Section 2(f) of the Domestic Violence Act which reads as under :

"2(f). "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family."

The marriage-like relationship between the two also entails the aggrieved person to invoke the provisions of Domestic Violence Act. There is material on record to prima facie observe that, there was either marriage or marriage-like relationship between the applicant No.1 and the respondent. The respondent has asked for a monetary relief.

7. So far as regards applicants No.2 to 13 are concerned, it is to be stated that, a very vague and omnibus allegations have been made against them. The applicants No.6, 8 and 10 are the married sisters-in-law of the respondent. Their respective husbands (applicants No.7, 9 and 11) have also been made parties to the proceedings. The applicant No.12 is the son of maternal cousin brother of applicant No.1. Applicant No.13 is his wife. The brother-in-law (real brother of applicant No.1) has also been made a party to the proceedings along with his parents. Admittedly, the respondent has filed a proceeding under Section 498-A of the Indian Penal Code against the applicant No.1 and his parents as well. It is reiterated that, the averments in the application are general and omnibus. No particular incident of alleged ill-treatment of the respondent by applicants No.2 to

13 has been stated in the application. In view of this Court, allowing the continuation of the proceedings under the Domestic Violence Act against applicants No.2 to 13 would be an abuse of process of Court. This Court is, therefore, inclined to allow the Criminal Application of the applicants No.2 to 13. Hence the order :

ORDER

- (i) Criminal Application of applicant No.1 is rejected.
- (ii) Criminal Application of applicants No.2 to 13 is allowed. The proceedings being P.W.D.V.A. No.431/2019 pending before the Court of Judicial Magistrate, First Class, Aurangabad are quashed to the extent of applicants No.2 to 13.
- (iii) The Presiding Officer of the Court concerned shall not be influenced by the order rejecting the application of the applicant No.1.

(R. G. AVACHAT, J.)

fmp/-